

REMARKS

Claims 1-33 are currently pending in the present application, of which 6, 7, 16 and 20 have been withdrawn from consideration. The Examiner required restriction under 35 U.S.C. § 121 to one of the following species:

AI: The embodiment of an apparatus for delivering a biologically active material comprising microneedles disposed on a plate which project through the balloon wall.

AII: The embodiment of an apparatus for delivering a biologically active material comprising ruptureable microneedles disposed on the balloon's outer surface, further comprising a triggering source for rupturing the microneedles.

In response to the election requirement, Applicants elect, with traverse, to prosecute Species AI in this application. It is believed that claims 1-5, 8-15, 17-19 and 21-33 are readable on elected Species AI.

The M.P.E.P. § 811 (Eighth Edition, Revision 3, August 2005) states:

Before making a restriction requirement after the first office action on the merits, the examiner will consider whether there will be a *serious* burden if restriction is not required.

(Emphasis added).

Applicants submit that to search the subject matter of species I and II would not constitute a serious burden to the Examiner since both of the above species had previously been searched during prosecution of the application. See Office Action dated January 31, 2006.¹ Thus, Applicants respectfully request that both species be examined together.

Applicants fully reserve the right to prosecute the non-elected subject matter in one or more related applications.

Also, Applicants note that upon allowance of a generic claim, Applicants are entitled to consideration and allowance of the non-elected claims that include all the recitations of the allowed generic claim. It is believed that claims 1-5, 8-15, 17-19 and 21-33 are generic.

¹ It is believed that Applicants' response to that Office Action, filed May 23, 2006, put the application in condition for allowance. Consideration of Applicants' response is respectfully requested.

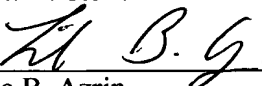
Applicants respectfully request that the above remarks be entered and made of record in the file history of the instant application.

Respectfully submitted,

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